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5 Attorney for Trustee  
6 KARI BOWYER

7 UNITED STATES BANKRUPTCY COURT  
8  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 **In re**  
12 **THUAN-VU D HO,**  
13  
14 **Debtor.**

**Case No. 14-50354 SLJ-7**  
**Chapter 7**

**MOTION FOR ORDER AUTHORIZING**  
**SALE OF REAL PROPERTY, SUBJECT**  
**TO OVERBID, AND PAYMENT OF**  
**REAL ESTATE COMMISSIONS**

**Date: December 9, 2015**

**Time: 2:00 p.m.**

**Place: Courtroom 3099**

**280 South First St.**

**San Jose, California**

**Judge: Hon. Stephen L. Johnson**

21 Kari Bowyer, Chapter 7 trustee ("Trustee") of the bankruptcy  
22 estate of debtor, Thuan-Vu D Ho ("Debtor"), hereby files this  
23 Motion for Order Authorizing Sale of Real Property, Subject to  
24 Overbid, and Payment of Real Estate Commissions, and represents as  
25 hereinafter set forth.

26 1. Debtor filed his voluntary Chapter 7 bankruptcy petition  
27 on January 30, 2014.

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Motion For Order Approving  
Compromise of Controversy

1           2.     In connection with settlement of an adversary proceeding  
2 approved by the Court, the estate acquired the real property  
3 located at 24563 Corte Jaramillo, Murietta, California, Assessor's  
4 Parcel Number 949-384-003-4 (the "Property"). The Property is a  
5 single-family home and a rental property. The legal description of  
6 the Property is as follows:

7           Lot 56 of Tract No. 23050-1, in the City of Murietta,  
8           County of Riverside, State of California, As Per Map  
9           Recorded in Book 203, Pages 9 through 14 inclusive of  
10          Maps, in the Office of the County Recorder of Said  
11          County.

12           3.     The Trustee has accepted an offer from, and seeks  
13 authority to sell all of the estate's right, title and interest in  
14 the Property to, the current tenants of the Property, Lawrence  
15 Segura and Melissa Segura (the "Buyers"), for the purchase price of  
16 \$370,000 ("Purchase Price") as set forth in a Residential Purchase  
17 Agreement, Addendum to Purchase Agreement and Seller Counter Offer  
18 No. 1 (collectively the "Purchase Agreement"). Pursuant to the  
19 Purchase Agreement, the Buyers will receive a \$2,075 credit for  
20 their security deposit previously paid against the Purchase Price.  
21 In addition to the Purchase Price, the Buyers will continue to pay  
22 rent of \$2,075 per month through close of escrow or until the  
23 rental terms expires on December 1, 2015, whichever is later. The  
24 Trustee has accepted the offer of the Buyers subject to (a)  
25 Bankruptcy Court approval and (b) the opportunity for other parties  
26 to submit overbids. There are no contingencies in this sale. The  
27 sale of the Property is on an as-is, where-is basis with no  
28 representations or warranties by the Trustee.

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1           4. The Purchase Agreement replaced a previously submitted  
2 offer from Buyers with the same terms which appeared to provide for  
3 a dual broker as further explained in the Trustee's declaration  
4 filed contemporaneously herewith.

5           5. The Trustee listed the Property for sale at \$429,000 in  
6 June immediately after title was transferred to the estate.  
7 Several open houses were held. She received only the one offer  
8 from Buyers who are also the current tenants of the Property.  
9 Based on the Trustee's marketing efforts and the advice of her  
10 broker, she has concluded that the sale to the Buyers for \$370,000  
11 represents a fair market value. Notwithstanding, she is continuing  
12 to market the Property and will do so subsequent to the filing of  
13 this motion. She will advise all potentially interested parties of  
14 the opportunity to submit overbids as set forth below.

15           6. The Trustee requests that in the event the Buyers do not  
16 close the transaction, that she be authorized to sell the Property  
17 on the same terms and at the same price to an alternate purchaser  
18 without a further order of the Court.

19           7. The Trustee also requests authority to take whatever  
20 actions are necessary to consummate the transactions provided for  
21 herein, including the execution of documents.

22           8. Further, the Trustee will retain the right to negotiate  
23 minor changes to the Purchase Agreement, including minor changes to  
24 the price, without further Court order.

25           9. Based upon the Residential Listing Agreement entered into  
26 between the Trustee and Steven M. Speier of American Spectrum  
27 Management Group, Inc. ("Trustee's Broker"), since Buyers do not  
28 have a broker, the Trustee intends to pay a real estate commission

1 equivalent to four percent (4%) of the gross sales price to  
2 Trustee's Broker.

3 10. In the event there is a successful overbid and the buyer  
4 is represented by a broker, the real estate commission to be paid  
5 by the Trustee will be equivalent to five percent (5%) of the gross  
6 sales price, which would be split between the Trustee's Broker and  
7 the broker of any successful overbidder.

8 11. Regardless of whether the Court authorizes the sale of  
9 the Property to Buyers or to a successful overbidder, Trustee's  
10 Broker has agreed that the following costs to be paid by the  
11 Trustee pursuant to the terms of the Purchase Agreement shall be  
12 paid by Trustee's Broker and deducted from the commission otherwise  
13 payable to Trustee's Broker:

- 14 a. Owner's title insurance policy;
- 15 b. County and/or city transfer tax or fee; and,
- 16 c. Homeowner's Association ("HOA") transfer fee and/or  
17 any and all HOA fees, if any.

18 12. The Trustee will be paying from escrow amounts secured by  
19 the first priority deed of trust (estimated to be \$250,000), real  
20 estate commissions, any real estate tax due (approximately  
21 \$4,000/year) prorated between Buyers and the Trustee, and ordinary  
22 costs of sale according to custom subject to the exceptions with  
23 regard to costs paid by Trustee's Broker as set forth above.

24 13. Overbid Terms: One of the conditions of the offer is that  
25 it is subject to overbids. Trustee submits the following terms and  
26 conditions for the submission of overbids to purchase the Property:

- 27 a. The Trustee has given Buyers "overbid protection" of  
28 \$5,000. Therefore, the minimum overbid must be at least \$375,000;

1           b. After the first overbid, the amount of bidding  
2 increments will thereafter be no less than \$1,000;

3           c. Bids must be an all cash offer or pre-approved loan,  
4 and the offer must not contain loan contingencies, inspection  
5 contingencies or any other contingencies. Overbids must be in  
6 writing, submitted without condition, and must be on the same terms  
7 as Buyers' offer with the exception that any offer must include a  
8 provision that states the buyer is purchasing the Property subject  
9 to the tenancy of Buyers and the current lease and further, that  
10 the deposit shall be \$5,000.

11           d. The written overbid shall be accompanied by a  
12 deposit of \$5,000 in the form of a cashier' check or other  
13 certified funds payable to "Kari Bowyer, Trustee" and delivered to  
14 the Trustee in care of Trustee's counsel at the address set forth  
15 above, no later than 12:00 p.m. on Monday, November 30, 2015.  
16 Deposit checks will be held by counsel until completion of the  
17 auction referred to and described below.

18           e. If the successful bidder fails to consummate the  
19 purchase, the \$5,000 deposit will NOT be refunded to the successful  
20 bidder, but will be retained by the Trustee as liquidated damages.  
21 Deposits will be returned to the unsuccessful bidders, other than  
22 the backup offer, upon the conclusion of the auction.

23           f. In the event the Trustee receives any overbids, the  
24 overbid auction will take place on Friday, December 4, 2015, at  
25 2:00 p.m. at the Property.

26           g. The bidder will be required to close escrow within  
27 thirty (30) days of entry of an order of the Bankruptcy Court  
28 approving the sale.

1           h. The sale is expressly subject to approval of the  
2 United States Bankruptcy Court for the Northern District of  
3 California.

4           i. The sale will be on an as-is, where-is basis,  
5 without any representations or warranties, express or implied. Any  
6 disputes with respect to the sale will be resolved by the United  
7 States Bankruptcy Court in its sole and complete discretion.

8           j. The Trustee may accept a backup offer at the  
9 auction.

10           k. The Trustee reserves the right, in her sole  
11 discretion, to refuse bids which do not, in her sole opinion,  
12 conform with the terms of the sale, to modify these terms and  
13 conditions or to continue the sale from time to time. The Trustee,  
14 in her sole discretion, will determine the highest and best bid.

15           l. Bidders or representatives of the bidders may have  
16 an opportunity to attend the auction telephonically, at the  
17 Trustee's discretion.

18           14. Parties interested in submitting overbids should arrange  
19 for inspections as soon as possible by contacting Trustee's Broker,  
20 Steven M. Speier of American Spectrum Management Group, Inc. at  
21 [sspeier@asrmanagement.com](mailto:sspeier@asrmanagement.com), 949-753-5863 or 949-510-4018. The  
22 Trustee is selling the Property in its "as is" condition without  
23 any representation or warranty. She expects any overbid to be  
24 submitted without inspection or financing contingencies.

25           15. If no qualifying overbid is received (and no objection to  
26 the sale is filed), the Trustee will request entry of an order by  
27 the Bankruptcy Court authorizing the sale to the Buyers for  
28 \$370,000.

1           16. It is the Trustee's intent to request a waiver of any  
2 stay on the effectiveness of the order imposed by Rule 6004(h) of  
3 the Federal Rules of Bankruptcy Procedure.

4           **WHEREFORE**, the Trustee requests entry of an order authorizing  
5 the relief sought above.

6  
7 Dated: October 29, 2015           LAW OFFICE OF MARLENE G. WEINSTEIN

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9   By: /s/ Marlene Gay Weinstein  
10    MARLENE G. WEINSTEIN  
11    Attorney for Kari Bowyer  
12    Chapter 7 Trustee  
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